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Attorneys for Defendant

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

EFREN M. ZAMORA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. C-08-01340 SC

**STIPULATION AND AGREEMENT OF  
COMPROMISE AND ~~PROPOSED~~  
ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between plaintiff EFREN ZAMORA and defendant UNITED STATES, (hereinafter the "Federal Defendant"), by and through their undersigned counsel, as follows:

1. The parties do hereby agree to settle, compromise and dismiss the above-captioned action ("This Action") under the terms and conditions set forth herein.

2. The Federal Defendant agrees to pay the sum of Fifteen Thousand Dollars and no cents (\$15,000.00) to Plaintiff under the terms and conditions set forth herein.

3. The Plaintiff and his heirs, executors, administrators, assigns and attorneys hereby agree to accept the sum of Fifteen Thousand Dollars and no cents (\$15,000.00), in full and

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ORDER  
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1 final settlement and satisfaction of the claims raised in This Action under the terms and  
2 conditions set forth herein.

3 4. It is also agreed, by and among the parties, that the settlement amount of Fifteen  
4 Thousand Dollars and no cents (\$15,000.00) represents the entire amount payable to Plaintiff and  
5 his heirs, executors, administrators, assigns and attorneys.

6 5. It is also agreed, by and among the parties, that the settlement amount of Fifteen  
7 Thousand Dollars and no cents (\$15,000.00) shall be made payable to Plaintiff Efren Zamora.  
8 The check will be mailed to the plaintiff's attorney at the following address: Thomas G. Quick,  
9 J.D. 1901 Harrison Street, 9<sup>th</sup> Floor, Oakland, CA 94612.

10 6. It is also agreed by and among the parties that neither Plaintiff nor any of his attorneys  
11 may make any claim for attorney's fees or other costs against the Federal Defendant, its agents,  
12 servants, or employees.

13 7. In consideration of the payment of Fifteen Thousand Dollars and no cents (\$15,000.00) as  
14 set forth above, the Plaintiff agrees that he will immediately upon execution of this agreement,  
15 execute a Stipulation of Dismissal, which stipulation shall dismiss, with prejudice, all claims  
16 asserted in This Action or any claims that could have been asserted in This Action, which is  
17 captioned *Efren Zamora v. United States*, U.S. District Court Northern District of California  
18 Case No. C-08-01340 SC.

19 8. In consideration of the payment of Fifteen Thousand Dollars and no cents (\$15,000.00) as  
20 set forth above, the Plaintiff hereby releases and forever discharges the Federal Defendant and  
21 any and all of its past and present officials, directors, employees, agents, attorneys, successors,  
22 and assigns from any and all obligations, damages, liabilities, causes of actions, claims, and  
23 demands of any kind and nature whatsoever, which have been or could have been raised in the  
24 complaint in This Action, whether suspected or unsuspected, arising in law or equity, arising  
25 from or by reason of any and all known, unknown, foreseen, or unforeseen injuries, and the  
26 consequences thereof, resulting from the facts, circumstances and subject matter that gave rise to  
27 This Action, including all alleged violations of the Federal Tort Claims Act asserted by Plaintiff  
28

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1 in each and every administrative complaint filed by Plaintiff related to the events that allegedly  
 2 took place on between September 12, 2000 and October 2006, by which Plaintiff alleges that the  
 3 Federal Defendant failed to failed to diagnose, adequately disclose a diagnosis, and treat him for  
 4 Hepatitis B, as described in plaintiff's Complaint or any and all claims that could have been  
 5 asserted in the administrative complaint against the Federal Defendant.

6 9. In consideration of the payment of Fifteen Thousand Dollars and no cents (\$15,000.00) as  
 7 set forth above, the Plaintiff further agrees that he may not and will not use or rely on the  
 8 incidents and actions in his administrative complaint or the Complaint in this Action in any other  
 9 administrative proceeding, state court action or federal court action he may bring.

10 10. The provisions of California Civil Code Section 1542 are set forth below:

11 A general release does not extend to claims which the creditor does not know or  
 12 suspect to exist in his favor at the time of executing the release, which if known  
 by him must have materially affected his settlement with the debtor.

13 The Plaintiff having been apprised of the statutory language of Civil Code Section 1542 by his  
 14 attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and  
 15 all rights he may have pursuant to the provision of that statute and any similar provision of  
 16 federal law. The Plaintiff understands that if the facts concerning the his injury and the liability  
 17 of the Federal Defendant, or its directors, officers, agents, servants, or employees, for damages  
 18 pertaining thereto are found hereafter to be other than or different from the facts now believed by  
 19 his to be true, this agreement shall be and remain effective notwithstanding such material  
 20 difference.

21 11. The parties acknowledge that neither this agreement nor anything contained herein shall  
 22 constitute an admission of liability or fault on the part of the Federal Defendant, or its directors,  
 23 officers, agents, servants, or employees. This agreement is entered into by the parties for the  
 24 purpose of compromising disputed claims, avoiding the expenses and risks of litigation, and  
 25 buying peace.

26 12. This agreement may be pled as a full and complete defense to any action or other  
 27 proceeding, including any local, state or federal administrative action, involving any person or  
 28

1 party which arises out of the claims released and discharged by this agreement.

2 13. If any withholding or income tax liability is imposed upon Plaintiff based on payment of  
3 the settlement sum as set forth herein, Plaintiff shall be solely responsible for paying any such  
4 liability. Plaintiff, and his attorneys, will indemnify and hold harmless the Federal Defendant  
5 from any liability the Federal Defendant may incur from any government agency arising out of  
6 any failure by Plaintiff to pay any tax liability he might be responsible for from any government  
7 agency.

8 14. Plaintiff and his attorneys have been informed that payment of the settlement amount may  
9 take 90 days or more to process.

10 15. The parties agree that the District Court shall retain jurisdiction over this matter for the  
11 purposes of resolving any dispute alleging a breach of this agreement.

12 16. Each party acknowledges that they have been represented by and have relied upon  
13 independent counsel in negotiating, preparing and entering into this agreement and that they have  
14 had the contents of this agreement fully explained by counsel and that they are fully aware of and  
15 understand all of the terms of the agreement and the legal consequences thereof. It is further  
16 acknowledged that the parties have mutually participated in the drafting of this agreement and it  
17 is agreed that no provision herein shall be construed against any party hereto by virtue of the  
18 drafting of this agreement.

19 17. If any provision of this agreement shall be held invalid, illegal, or unenforceable, the  
20 validity, legality, and enforceability of the remaining provisions shall not in any way be affected  
21 or impaired thereby.


22 18. This instrument shall constitute the entire agreement between the parties, and it is  
23 expressly understood and agreed that this agreement has been freely and voluntarily entered into  
24 by the parties hereto with the advice of counsel, who have explained the legal effect of this  
25 agreement. The parties further acknowledge that no warranties or representations have been made  
26 on any subject other than as set forth in this agreement.

19. This agreement may not be altered, modified or otherwise changed in any respect except in writing, duly executed by all of the parties or their authorized representatives.

Dated: February 24, 2009


  
EFREN ZAMORA  
Plaintiff

Dated: February 25, 2009 By:

  
THOMAS QUICK  
Attorney for Plaintiff

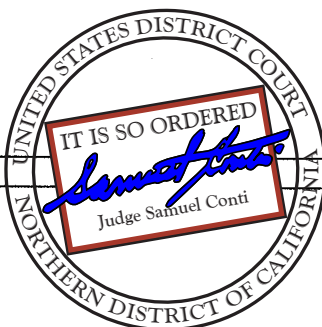
JOSEPH P. RUSSONIELLO  
United States Attorney

Dated: February 24, 2009

By:   
MELISSA K. BROWN  
Assistant United States Attorney  
Attorneys for the Federal Defendant

**PURSUANT TO THE ABOVE STIPULATION AND AGREEMENT,  
APPROVED AND SO ORDERED:**

Dated: 3/2/09



SAMUEL CONTI  
United States District Court Judge